IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

WP(C).No. 29104 of 2007(M)

PETITIONER:

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1. KURUPPUMPADY SERVICE CO-OPERATIVE BANK LTD.NO.E.257, KURUPPUMPADY, REPRESENTED BY ITS SECRETARY.

2. KURUPPUMPADY SERVICE CO-OPERATIVE BANK LTD.NO.E.257, KURUPPUMPADY, DIRECTOR BOARD, REPRESENTED BY ITS PRESIDENT.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS:

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1. T.K.DAVID, SECRETARY (UNDER DISMISSAL), KURUPPUMPADY SERVICE CO-OPERATIVE BANK LTD.NO.E. 257, THOTTIPARAMBIL HOUSE, VENGOLA P.O., ERNAKULAM.

2. THE CO-OPERATIVE ARBITRATION COURT, THIRUVANANTHAPURAM.

3. THE KERALA CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM.

BY ADV. SRI.BABY KURIAKOSE
SRI.N.SUKUMARAN
SRI.P.VIJAYAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD

ON 03/12/2007, THE COURT ON 6/12/2007 DELIVERED THE

FOLLOWING:

APPENDIX IN W.P(C) 29104/07

PETITIONER'S EXTS:

EXT.P1: TRUE PHOTOCOPY OF THE AWARD IN A.R.C.NO:27/06 DT. 30.3.2006 PASSED BY THE 2ND RESPONDENT

EXT.P2: TRUE PHOTOCOPY OF THE A.P.NO: 21/2007 ALONG WITH STAY PETITION DT. 23.3.2007 FILED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT

EXT.P3: -DO- OF THE JUDGMENT DT. 13.6.2007 IN W.P(C) NO: 17561/07 OF THIS HONB'BLE COURT

EXT.P4: -DO- OF I.A. NO: 142/2007 IN A.P. NO: 21/2007 ALONG WITH AFFIDAVIT DT. 12.7.2007 FILED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT

EXT.P5: -DO- OF THE COUNTER AFFIDAVIT DT. 24.7.2007 FILED BY THE 1ST RESPONDENT IN EXT.P2

EXT.P6: -DO- OF THE COUNTER AFFIDAVIT DT. 10.8.2007 FILED BY THE 1ST RESPONDENT IN EXT.P4

EXT.P7: -DO- OF THE ARGUMENT NOTE DT. 12.8.2007 FILED BY THE PETITIONER IN EXT.P2

EXT.P8: -DO- OF THE ARGUMENT NOTE DT. 14.8.2007 FILED BY THE 1ST RESPONDENT IN EXT.P2

EXT.P9: -DO- OF THE JUDGMENT DT. 15.9.2007 PASSED BY THE 3RD RESPONDENT

EXT.P10: TRUE PHOTOCOPY OF THE MEMO DT. 10.6.1988 ISSUED BY THE BANK TO THE 1ST RESPONDENT

EXT.P11: -DO- OF THE MEMO DT. 10.6.1988 ISSUED BY THE BANK TO THE 1ST RESPONDENT

EXT.P12: -DO- OF THE MEMO ISSUED BY THE BANK TO THE 1ST RESPONDENT

EXT.P13: -DO- OF THE RECEIPT DT. 5.5.2004 ISSUED BY THE 1ST RESPONDENT FOR HAVING RECEIVED SUBSISTENCE ALLOWANCE

EXT.P14: -DO- PHOTOCOPIES OF THE COMPLAINT DT. 7.2.2005. FIR AND CHARGE SHEET IN CRIME NO: 57/2007 SUBMITTED BY THE KURUPPAMPADY POLICE BEFORE THE JUDICIAL I CLASS MAGISTRATE COURT, PERUMBAVOOR

EXT.P15: -DO- OF THE COMPLAINT DT. 7.2.2005, FIR AND CHARGE SHEET IN CRIME NO: 58/2007 SUBMITTED BY THE KURUPPAMPADY POLICE BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, PERUMBAVOOR

RESPONDENTS' EXTS:

EXT.R1A: THE TRUE COPY OF THE JUDGMENT IN W.P(C) 7684/04

EXT.R1B: -DO- OF THE ORDER DT. 6.1.05

EXT.R1C: -DO- OF THE INTERIM ORDER

EXT.R1D: -DO- OF THE JUDGMENT IN W.P(C) 2631/05

EXT.R1E: THE TRUE ORDER IN I.A. NO: 13323/06

EXT.R1F: -DO- OF JUDGMENT IN W.A. 177/07

/TRUE COPY/

jj P.S. TO JUDGE

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.29104 of 2007-M

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Dated this the 6th day of December, 2007.

JUDGMENT

"CR"

1. Is a decision by an Arbitration Court setting aside an enquiry report in disciplinary proceedings and giving liberty to the parties to prove their case before it appealable under Section 82 of the Kerala Co-operative Societies Act, 1969?

2. Shorn of unnecessary details, the facts are that the first respondent - employee was placed under suspension by the first petitioner - society. Following disciplinary proceedings, he was dismissed. The dispute between him and the society, on account of that, being one that fell

under Section 69(2)(d) of the Act, he moved the Arbitration Court. By Ext.P1, the enquiry report was set aside leaving it to the parties to prove their case. The society filed an appeal under Section 82 of the Act before the Tribunal. The employee disputed the maintainability of that appeal. The society then moved an interlocutory application for conversion of the appeal into a revision, in the event of the appeal being found to be not maintainable. The Tribunal held that an appeal is not maintainable and further held that the appeal cannot be converted into a revision. That order, Ext.P9, is under challenge.

3. Section 69(1)(c), in so far as it is relevant, provides that notwithstanding anything contained in any law for the time being in force, if a dispute arises between the society and any officer or employee or any past officer or employee, such dispute shall be referred to the Arbitration Court, in the case of non-monetary disputes, which shall decide such dispute and no

other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. Clause (d) of sub-section (2) of Section 69 provides that a dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section (1) of Section 80, shall also be deemed to be a dispute for the purpose of sub-section (1) of Section 69. The Arbitration Court constituted under Section 70A is to act in terms of Section 70 of the Act, sub-section (1) of which provides that it shall pass an award in accordance with the provisions of the Act and the Rules and the bye-laws and such award shall, subject to the provisions of Section 82, be final. Section 82(1)(a) provides that any person aggrieved by, among other things, an award of the Arbitration Court under sub-section (1) of Section 70, may appeal to the Tribunal and the Tribunal may pass such orders on the appeal as it may deem fit. Therefore, an appeal lies against

an award under Section 70(1) of the Act. Like any adjudicating authority, the Arbitration Court has the power to pass award deciding the matters on merits. It also has the power to issue interlocutory orders during the pendency of proceedings before it - see Sub-section (2) of Section 70.

4.The question would be as to what is the nature of a decision taken by the Arbitration Court holding that the enquiry report is liable to be set aside and as a consequence, sets aside the enquiry report leaving the parties to place materials and adduce evidence before it, on the merits of the rival contentions.

5.In matters affecting discipline, it is for the employer to take action and once the employer concludes disciplinary proceedings on the basis of domestic enquiry, any adjudicator of a dispute touching the matter governed by the disciplinary proceedings, in the realm of labour laws or

otherwise, has to first and foremost, decide on the sustainability or otherwise of the enquiry proceedings. If the enquiry proceedings withstand the well settled tests laid down by the laws, the question of proportionality of the punishment and such matters may or may not be gone into, depending on the case. Unless it is decided that the enquiry proceedings are vitiated, any authority adjudicating on the correctness of the disciplinary proceedings cannot further proceed into any other question. The adjudication of such matters also provides an opportunity for the employer to sustain its charges before that adjudicator when the disciplinary proceedings and the enquiry conducted by it or on its behalf did not withstand the tests of the adjudicator. Therefore, a decision that the enquiry proceedings and the report are vitiated and that the same do not stand, is not merely an interlocutory order during the course of proceedings because, the findings on such issues

result in answering the disputes between the parties, by adjudication of the lis, while interlocutory orders are envisaged to manage the rights of parties during the course of the main proceedings either by preservation, protection or otherwise and also to provide certain steps in aid of the final adjudication process. Therefore, the conclusion is inescapable that the decision rendered by an Arbitration Court in holding that the disciplinary proceedings and enquiry report cannot stand, is a decision which is final as far as that matter is concerned and is, therefore, an award in terms of Section 70(1) of the Act. The Arbitration Court has, in the case in hand, therefore, rightly given the nomenclature "Award" for the decision it issued, namely, Ext.P1.

6. Having held that Ext.P1 is an award in terms of Section 70(1) of the Act, it goes without saying that an appeal under Section 82(1)(a) of the Act is maintainable against Ext.P1. The decision contained in the impugned Ext.P9, to the

contrary, therefore, does not stand. The same is accordingly set aside.

7.The writ petition is allowed as above. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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